Greenberg
Traurig

Mitchell F. Brecher
(202) 331-3152
BrecherM@gtlaw.com

May 2, 2006

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: EX PARTE PRESENTATION
CC Docket No. 96-45 - Federal-State Joint Board on Universal Service

Dear Ms. Dortch:

On April 26, 2006, CTIA -- The Wireless Association® filed with the Commission in this proceeding a report entitled The Consumer Benefits of CTIA -- The Wireless Association®'s Numbers-Based Universal Service Contribution Proposal (the "CTIA Report"). In its paper, CTIA presents reasons why it believes that a numbers-based Universal Service Fund (USF) contribution methodology would be beneficial to residential consumers. This responsive letter is submitted on behalf of TracFone Wireless, Inc. ("TracFone") to refute several of the premises set forth in the CTIA Report.

As TracFone explained in a response to a prior CTIA filing in this proceeding,[1] TracFone is a carrier member of CTIA. Although TracFone participates actively in many CTIA activities and generally supports CTIA's efforts, it disagrees with CTIA's position on the matter of universal service contribution methodology. For reasons which TracFone has explained in many previous filings, imposition of a numbers-based contribution methodology would dramatically increase the USF contribution obligations on providers of prepaid wireless services, and, more importantly, on consumers of those services who are typically low volume, often low income, consumers. For that reason, TracFone has recommended that if the Commission were to adopt a numbers-based contribution methodology, it should either permit those providers of interstate telecommunications

[1] Letter from Mitchell F. Brecher dated January 31, 2006.

service who are unable to recover their USF costs through billed surcharges to continue to contribute based on interstate revenues, or should cap the USF contributions for such providers at levels at which they contribute under the current revenues-based methodology.[2]

The CTIA Report asserts that a "typical" residential customer would pay about the same into USF under a numbers-based plan as it would under the revenues-based system. According to CTIA, "the average residential customer would pay no more than $3.01 per month in federal universal service costs in 2006." (CTIA Report at 3, emphasis added). CTIA's assertions about "typical" and "average" customers demonstrate the major flaw (but not the only flaw) in CTIA's analysis. What the CTIA Report seems to ignore is that the very concept of "average" customers means that some customers will be above average and other customers will be below average. Whether or not some hypothetical "average" residential customer will contribute the same, slightly more, or slightly less under CTIA's numbers-based plan than it pays into USF under the current system, it is irrefutable that many below average customers will pay substantially more to the USF without any increase in their use of interstate telecommunications service while many above average customers (*i.e.*, those who purchase large quantities of interstate service) will enjoy significant reductions in their USF contribution obligations.

Further, the CTIA Report's conclusion that the so-called "average" residential customer will not pay more to USF than it does today is based upon a flawed analysis. First, it is clearly limited to wireline residential customers. CTIA notes that a residential customer contributes $0.71 per month to USF on its end user common line charge. What CTIA disregards is that residential wireless customers are not assessed monthly subscriber line charges. Similarly, CTIA's analysis assumes incorrectly that all residential customers spend at least $5.00 per month on long distance calling plans which are subject to USF assessments of $0.36. The CTIA Report ignores the fact that many residential customers are not on long distance calling plans and make few, if any, interstate long distance calls. Why would any residential customer who makes few or no long distance calls sign up for a calling plan with a $5.00 monthly fee, irrespective of usage? Yet, the CTIA Report assumes that the "typical" or "average" customer does so. Moreover, since many wireless plans available today include long distance calling, there is no reason for any customer on such a wireless plan to pay a monthly $5.00 fee to be on a long distance plan. Once again, CTIA ignores the fact that not all customers are "typical" or "average" and that those whose usage and monthly interstate telecommunications service expenditures are below average would be harmed under its plan.

The plan described in the CTIA Report does address some below average consumers. There would be no USF contribution obligations on Lifeline and Link Up customers (CTIA Report at 5). However, exempting Lifeline and Link Up customers from the numbers-based proposal will not benefit most low volume low income consumers. According to Commission data, less than thirty-four percent of those households eligible for Lifeline assistance participate in the Lifeline program

[2] Significantly, recent filings on behalf of several CTIA members and companies with ownership interests in CTIA members are supportive of TracFone's proposal. See Letter from Kathleen Grillo on behalf of Verizon Communications and Verizon Wireless, filed March 3, 2006, and letter from Eric Einhorn, on behalf of AT&T, filed April 18, 2006.

(Source: Lifeline and Link-Up (*Report and Order and Further Notice of Proposed Rulemaking*), 19 FCC Rcd 8302 (2004) Appendix K - Section 1). More than sixty-six percent of Lifeline-eligible low income consumers are not Lifeline customers and therefore will not be protected from the substantial USF increases which they will experience under the CTIA plan. In addition, as CTIA is well-aware, Lifeline support is limited to one line per household. Today, many households, including many low income households, purchase wireless service which has become an important safety and security service as well as a virtual necessity in an increasingly mobile society. Those many Lifeline customers who also purchase one or more wireless services for their family's safety and security will be subject to flat USF surcharges on each and every telephone number associated with such services, irrespective of interstate usage. Such customers will enjoy no protection under the CTIA plan.

The CTIA proposal offers some relief to customers of wireless family plans and to prepaid wireless customers by "discounting" the flat per month charge on working numbers by fifty percent. While CTIA's fifty percent discount proposal on each telephone number associated with such services may insulate some of CTIA's hypothetical "average" customers from substantial USF cost increases, many customers of prepaid wireless service will see significant increases in their USF charges. The CTIA Report explains that a "typical" prepaid customer has a "$20.00 per month charge." (CTIA Report at 5). CTIA has offered no explanation as to how this "typical" $20.00 per prepaid customer per month figure was derived.[3] TracFone is the nation's leading provider of prepaid wireless services with more than six million prepaid customers. It has no idea where such an assumed industry average comes from. TracFone has stated on the record that its monthly USF contribution is approximately $0.06 per customer based on TracFone's actual interstate revenues (TracFone does not reduce its reported interstate usage based on the Commission's 28.5 percent safe harbor). At $0.50 per number per month, TracFone's per customer USF contribution would increase by more than 800 percent (from $0.06 to $0.50). CTIA states that its plan will ensure that residential customers, especially low income or low usage customers "are not unfairly impacted by the transition to a new system." (CTIA Report at 5). However, it offers no explanation as to why an increase of more than 800 percent will not unfairly impact those customers. This omission reiterates the fundamental flaw in the CTIA Report -- that it is based solely on CTIA's perception of "average" customers, with no regard whatsoever as to how damaging its approach would be for below average customers and those providers that serve them.

Several other aspects of the CTIA Report merit response.

The CTIA Report claims that "numbers are easily understood by consumers -- the proposal has the added benefit of administrative simplicity." (CTIA Report at 2). The very notion that consumers will easily understand numbers and implicitly that they might have difficulty understanding such concepts as usage, revenues and prices as bases for assessing USF

[3] Not only is the basis for this $20.00 per customer per month assumption unexplained, it is unexplainable. Prepaid wireless services is offered on a "pay-as-you-go" basis. Consumers purchase quantities of prepaid usage when they need it. Prepaid service typically is not offered on a monthly basis.

contributions, insults the intelligence of American consumers -- average and otherwise. No matter how the Commission or telecommunications carriers choose to characterize USF charges, those charges are generally perceived by consumers to be a tax. It is a line item charge on their bills (except for prepaid providers who do not render bills and have no opportunity to recover their USF contributions other than in their rates) to recover a fee imposed (on their vendors) by the government. Consumers are thoroughly familiar with taxes being based on revenues. That is the bedrock upon which the Federal and state income tax systems are based. Consumers are also thoroughly familiar with paying taxes based on the prices of their purchases and the quantities of their consumption. That is how sales and excise taxes are calculated. American consumers pay taxes based on their revenues (incomes) and based on the price of their purchases every day of every year. To suggest that the concept of having their USF assessments based on how much they spend is confusing to consumers grossly underestimates the ability of the consuming public to understand how they are taxed.

The CTIA Report characterizes usage-based USF contributions as "penalizing" consumers. ("*Importantly, under a numbers-based system, residential customers will not be penalized with higher universal service contribution costs when they make long-distance calls and/or purchase more services.*" CTIA Report at 4-5). Imagine that! If a consumer purchases more it is subject to a greater tax on its purchase than one who purchases less. Why the CTIA Report's "penalty" argument is incorrect is illustrated by the following example: Consumer A purchases a new Mercedes-Benz automobile for $80,000 and is assessed a five percent sales tax of $4,000. Consumer B purchases a Kia automobile for $8,000 and is assessed a five percent sales tax of $400. Consumer A's tax assessment is ten times as great as Consumer B's. Consumer A's purchase is ten times as expensive as Consumer B's. Was Consumer A "penalized?" According to the CTIA Report, Consumer A has been penalized. Common sense and principles of equity and fairness say otherwise. Just as purchasers of Mercedes and Kias should not pay the same amount of tax on their purchases, neither should consumers of large amounts of interstate telecommunications service be required to make the same contributions to USF as are consumers of little or no interstate telecommunications service.

Perhaps the most ironic aspect of the CTIA Report is that, while it articulates concerns about residential consumers, not a single consumer advocacy group who has participated in this proceeding agrees with the CTIA plan. To date, the Commission has received more than 800,000 letters from consumers expressing concerns that a numbers-based plan will transfer much of the burden of funding the USF onto the shoulders of low volume consumers. In addition, such nationally-recognized groups as the Seniors Coalition, the American Association of Retired Persons, Consumer Action, the American Council for the Blind, the Alliance for Public Technology, the League of United Latin American Citizens, the Nation Grange, and others have expressed their concerns about the adverse impact of a numbers-based contribution methodology on their members. If, as the CTIA Report asserts, its plan would not harm the interests of residential consumers, why are so many individual consumers as well as the consumer advocacy groups unanimously opposed to the proposal? That is a question which neither CTIA nor any one else has addressed.[4]

The public safety community also has noted how a numbers-based plan, without appropriate exceptions, could compromise public safety. For example, the paging industry has pointed out that the availability of paging is critical to health care providers and to homeland security and public safety communications, and that a numbers-based plan like that advocated in the CTIA Report would impede the availability of such services.[5] Similarly, providers of automobile safety and emergency telematics services have noted that a numbers-based plan would reduce the availability of those important services.[6]

As noted throughout this letter, TracFone disagrees with much of the CTIA Report. However, it agrees with the CTIA Report in one very important respect. It too is concerned that the size of the USF is continuing to grow. What had in 1998 been about a $2 billion fund is now approaching $7 billion and is continuing to grow. It is imperative that responsible steps to be taken to control fund growth and to ensure that USF funds are distributed efficiently and targeted where they are needed to maintain universal service. Unless the growth of the USF is brought under control, contribution methodology reform will not solve the problems associated with the USF.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. Please direct any questions regarding this letter to undersigned counsel for TracFone.

Sincerely,

Mitchell F. Brecher
Counsel for TracFone Wireless, Inc.

cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate

---

[4] Residential consumers are not the only consumers who oppose CTIA's proposal. Numerous colleges and universities, as well as the Association of College and University Telecommunications Administrators, have noted to the Commission how imposition of a per number per month USF charge would dramatically raise the telecommunications costs on campuses and ultimately lead to a reduction of on-campus service.

[5] See, *e.g.*, letter from Frederick M. Joyce, Counsel to USA Mobility, Inc., filed March 21, 2006.

[6] See letter from Gary A. Wallace, Vice President for Corporate Relations, ATX Group, Inc., dated April 19, 2006; letter from David L. Sieradszki, on behalf of OnStar Corporation, dated February 8, 2006.

Mr. Dan Gonzalez
Mr. Ian Dillner
Mr. Scott Deutchman
Mr. Scott Bergmann
Ms. Dana Shaffer
Mr. Thomas Navin
Mr. Don Stockdale
Ms. Narda Jones
Ms. Cathy Carpino
Mr. Thomas Buckley
Mr. Greg Guice
Ms. Carol Pomponio
Mr. Paul Garnett